

ENTERED

August 29, 2016

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

MYRLA VANEGAS,

Plaintiff,

v.

SAM'S EAST, INC., *et al.*,

Defendant.

§
§
§
§
§
§
§
§

CIVIL ACTION NO. H-16-0620

ORDER GRANTING MOTION TO REMAND


In her motion to remand, Myrla Vanegas contends that the recently added in-state nondiverse defendant, Derick Rogers, is not only properly joined but is also a necessary party to this suit. Vanegas seeks the attorney's fees and costs associated with her motion to remand. (Docket Entry No. 17). In its response, Sam's East did not argue against remand. (Docket Entry No. 18). Instead, Sam's East argued only that it should not be required to pay Vanegas's attorney's fees and costs incurred in seeking remand.

On March 9, 2016, when Sam's East filed its Notice of Removal with this court, Vanegas had sued Sam's East, which is diverse to Vanegas, and a "John Doe" defendant. Removal based on diversity was proper. On March 31, 2016, Sam's East filed its initial disclosure listing Derick Rogers as the store employee involved in the incident. On April 19, 2016, Vanegas filed a motion for leave to file an amended complaint naming Derick Rogers as a defendant. That motion was granted. Diversity no longer existed. Sam's East appears to agree that remand is proper. The issue is the fees request.

Fees and costs are not appropriately awarded unless the defendant had no “objectively reasonable grounds to believe the removal was legally proper.” *Valdes v. Wal-Mart Stores, Inc.*, 199 F.3d 290, 293 (5th Cir. 2000). When Sam’s East filed its Notice of Removal, it had an objectively reasonable basis to do so. The fees and costs request is denied.

This case is remanded to the 400th Judicial District Court of Fort Bend County, Texas.

SIGNED on August 29, 2016, at Houston, Texas.



Lee H. Rosenthal
United States District Judge